

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

STACY EUGENE ERVIN, #1732730	§	
VS.	§	CIVIL ACTION NO. 4:15cv241
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

Petitioner Stacy Eugene Ervin, a prisoner confined in the Texas prison system, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the petition should be denied. Petitioner has filed objections.

Petitioner is challenging his Collin County convictions for sexual assault of a child, two counts of indecency with a child by contact, and indecency with a child by exposure. He asserts that he is entitled to federal habeas corpus relief for the following reasons:

1. The State violated his due process rights because it could not prove venue by a preponderance of the evidence;
2. Trial counsel was ineffective for failing to raise the defense of venue and failing to object to the State's bolstering of a witness during closing arguments; and
3. The prosecutor committed misconduct by using perjured testimony.

Magistrate Judge Nowak carefully reviewed each claim, found that they lack merit, and found that Petitioner failed to satisfy the requirements of 28 U.S.C. § 2254(d).

Petitioner complains in his objections that he filed a motion for an extension of time to respond to the Director's answer, but the Report and Recommendation was issued without giving him

additional time to respond. The records of the Court reveal that the deadline for Petitioner to file a response to the answer was September 24, 2015. Petitioner did not file a response by the deadline. Moreover, he still had not filed a response by October 15, 2015, and the Report and Recommendation was issued. Petitioner's motion for an extension of time was entered on the same day, but it was too late by then. Nonetheless, Petitioner's objections include arguments as to why he should be granted federal habeas corpus relief based on the three grounds previously mentioned. The Court finds that the arguments contained in his petition and objections lack merit. Moreover, he once again failed to overcome the requirements of § 2254(d).

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All other motions not previously ruled on are hereby **DENIED**.

SIGNED this 5th day of November, 2015.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE